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No. 88-1897

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

MICHIGAN DEPARTMENT OF STATE POLICE and COL. R. T. DAVIS, Director of the Michigan Department of State Police,

Petitioners,

v.

RICK SITZ, JOSEPH F. YOUNG, SR., DOMINIC J. JACOBETTI, DICK ALLEN, KEITH MUXLOW AND JACK WELBORN,

Respondents.

~~MOTION FOR LEAVE TO FILE A BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE~~

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE

Movants American Alliance for Rights and Responsibilities, Inc. and Remove Intoxicated Drivers, Inc., hereby respectfully move for leave to file the attached brief *amici curiae* in this case. Both counsel for the petitioners and for the respondents have consented to the filing of this brief.

The interest of the movants in this case arises from their efforts to stop drunken driving. In those efforts, they attempt to determine which law enforcement activities are both effective and constitutional. Both organizations have proposed traffic sobriety checkpoints as constitutional and effective methods of reducing the incidence of drunken driving. This Court's determination of the constitutionality of traffic sobriety checkpoints will have a substantial effect on both organization's future activities.

Movants believe that the Petition for Certiorari omits several factors within Movants' unique experiences which may aid the Court in determining whether to grant the Petition.

Respectfully submitted,

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PROPOSED BRIEF AMICI CURIAE

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United States Public Health Service, Statement of C. Everett Koop for Press Conference (May 31, 1989) 2,5

Robert B. Voas, Eugene Rhodin, and Cheryl Lynn, Evaluation of Charlottesville Checkpoint Operations, National Highway Traffic Safety Administration DOT HS 806989 (May 1985) 5

INTEREST OF AMICUS

Amicus American Alliance for Rights and Responsibilities (Alliance) is a District of Columbia non-profit corporation, which supports a healthy balance between individual rights and civic responsibilities. The incidence of drunk driving on American roads is a leading example of the pursuit of individual wants without regard to the consequences for others or for the society as a whole. Therefore the Alliance works to support the efforts of citizens' groups, voluntary associations, and government agencies to reduce drunk driving.

Remove Intoxicated Drivers, Inc. (RID-USA), is the oldest anti-"driving while intoxicated" ("DWI") national organization in the Nation and has 136 chapters operating in 36 states. RID-USA's goals are to deter drunken driving, help DWI victims, educate the public to demand a Sane National Alcohol Policy, and monitor and evaluate the laws and programs put into place to deter drunken driving.

The interest of the Alliance and RID-USA in proposing that this Court issue a writ of certiorari is different than that of the Attorney General of Michigan. As organizations involved with this issue nationwide, Amici advocate traffic sobriety checkpoints as part of a coordinated, multi-faceted effort to reduce drunk driving. The experience of RID-USA, in particular, is that adverse state court decisions, including the instant case, are confusing law enforcement officials nationwide, especially at the local level where decisions are frequently made to avoid litigation rather than risk expensive test cases in unsettled areas of the law.

Amici are adversely affected by the lower court's decision and therefore have an interest in supporting this petition for writ of certiorari in this case.

STATEMENT OF CONTEXT

A. Drunk Driving is an urgent national problem.

On May 31, 1989, the Surgeon General of the United States, Dr. C. Everett Koop, released the Proceedings of the Surgeon General's Workshop on Drunk Driving. Surgeon General's Workshop on Drunk Driving, *Proceedings*, December 14-16, 1988 (hereinafter *Proceedings*). Just as it was the Surgeon General who called the country's attention to the health effects of smoking in 1964, in 1989 it is the Surgeon General who calls for a national campaign on drunk driving. "It appears to me that we may now be — in terms of alcohol and drunk driving — where we were 25 years ago in terms of tobacco." *Proceedings*, at 7.

In his findings, issued in a separate statement, Surgeon General Koop declared:

> Nearly 24,000 people lost their lives in alcohol-related traffic crashes last year, an average of one alcohol related fatality every 22 minutes. An additional 534,000 people suffer injuries in alcohol-related crashes every year, an average of one every minute.

United States Public Health Service, Statement of C. Everett Koop, Press Conference announcing the release of the Proceedings of the Surgeon General's Workshops on Drunk Driving, May 31, 1989, P. 1.

According to the National Highway Traffic Safety Administration's Federal Accident Reporting System, slightly more than half of all motor vehicle fatalities in this country are alcohol-related. National Commission Against Drunk Driving, *Progress Report on Recommendations Proposed by the Presidential Commission on Drunk Driving*, December 1987 (hereinafter National Commission Report) at 6.

The trial court concluded that a similar percentage applies in Michigan. Appendix to Petition for Writ of Certiorari (hereinafter "App."), at 73a. The advisory committee which developed the guidelines for the Michigan Sobriety Checkpoint program cited the following statistics:

> Michigan 1984 alcohol-related traffic crash statistics reveal that 800 persons died, 28,681 suffered personal injury with a total economic cost of $351,959,000.

Id.

Both the Michigan trial court and the Michigan Court of Appeals recognized "there is a grave and legitimate State interest in curbing drunk driving." App. at 74a, 13a.

B. Sobriety Checkpoints Are An Important Part of a National Strategy to Reduce Drunk Driving.

Around the United States, civic groups and voluntary associations have joined together with educators, local and state government agencies, law enforcement officials, and the appropriate federal agencies to find answers to this national tragedy. National Commission Report, at 5. After decades of effort, it is evident that there is no "silver bullet"; no single method to curb drunk driving. The attitudes and behavior of intoxicated drivers have proven remarkably resistant to change. *Id.*

The consensus of these groups is that progress can be made only with a multi-faceted approach, no single

part of which can be proven in advance to be the solution, but all of which together may reduce the carnage on our highways. "A systems approach . . . is required . . . to prevent death and injuries resulting from drunk driving." *Id.* Options include removal of drivers licenses, rallies, public service announcements to raise public consciousness, free cab rides home from bars, imprisonment, and more. Presidential Commission on Drunk Driving, *Final Report*, November 1983, (hereinafter Presidential Commission Report) at 4-23. That the task force convened by the Governor of Michigan should recommend a 35-point plan of action, Brief of Petitioner, at 1, is typical of the broad approach being developed by state and local governments in response to concerned citizens.

One portion of this national consensus is that sobriety checkpoints are an important part of the overall strategy. Citizens' organizations such as Amicus RID-USA, Mothers Against Drunk Driving,[1] and the National Safety Council,[2] have each made the institution of sobriety checkpoints a priority in their nationwide advocacy efforts. Insurers such as the American Automobile Association[3] support these groups.

1 MADD, *Impaired Driving Issues Compendium; a Grassroots Call to Action* (1989)(hereinafter MADD) at 6.1-6.16

2 National Safety Council, Committee on Alcohol and Other Drugs,Policy Statement, *Enforcement of Laws Aimed at Alcohol-Impaired Driving*, (1986).

3 AAA, *1990 Policy Book: Driving Under the Influence of Alcohol and Other Drugs*, (unpaginated)

Federal agencies charged with the responsibility for public safety, including the National Highway Traffic Safety Administration[4] and the National Transportation Safety Board recommend use of traffic sobriety checkpoints. Further, the Presidential Commission Against Drunk Driving recommended the same approach in its final report. Presidential Commission, at 14-15.

In December, 1988, Surgeon General Koop convened a series of Workshops on Drunk Driving which included representatives from all relevant federal agencies, as well as "experts who . . . represent the broad array of specialists who must work together to bring this pervasive behavior under control." *Proceedings* at iii. After reviewing the results of these proceedings, Dr. Koop called for increased enforcement of drunken driving laws including expanded use of traffic sobriety checkpoints as part of a comprehensive, ten-point plan. *Proceedings*, at 53. United States Public Health Service, *supra*, at 1-14.

Nor are motorists likely to oppose use of traffic sobriety checkpoints. Opinion surveys have found up to 90% of drivers favor the use of this procedure. Robert B. Voas, Eugene Rhodinizer and Cheryl Lynn, "Evaluation of Charlottesville Checkpoint Operations," National Highway Traffic Safety Administration, DOT HS 806 989, (1985).

It is ironic indeed that the individuals who brought suit against the state to prohibit sobriety checkpoints are all Michigan state legislators. These legislators evidently concluded that a legislative ban on sobriety checkpoints was impossible because the people of the state of Michigan simply would not permit such a ban

4 *Proceedings*, at 13

to be voted into law. Unable to generate public support, they turned to the courts.

In summary, traffic sobriety checkpoints are an effective and accepted law enforcement measure. Government and private agencies believe that such checkpoints are a necessary element to end a scourge which needlessly deprives our Nation of thousands of innocent persons each year. Most Americans favor the use of checkpoints.

Americans "have joined forces [to] reduce the frightening carnage that results from alcohol-related crashes." National Commission Report, at 5. Any court decision which declared, in practical terms, such checkpoints unconstitutional would have a devastating effect on efforts to stop drunk driving.

ADDITIONAL REASONS FOR GRANTING THE WRIT

I. The Constitutionality of Traffic Sobriety Checkpoints Presents An Important Question of Federal Law As to Which Local Governments Are in Doubt and Which Should be Clarified by This Court.

In *Delaware v. Prouse*, 440 U.S. 648 (1979), this Court considered the constitutionality of a traffic stop when the motorist was halted simply because the officer was "not answering any complaints." 440 U.S. at 651. The Court reiterated a rule of reasonableness in gauging Fourth Amendment searches. 440 U.S. at 653-54. "[T]he permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate government interests." 440 U.S. at 654.

This balancing test was used in the context of vehicular "checkpoint operations" in *United States v. Martinez-Fuerte*, 428 U.S. 543, 546 (1976), based on the lesser intrusion upon the motorists' Fourth Amendment interests. *Prouse*, 440 U.S. at 656. This Court in *Prouse* noted the difference between unacceptable random roving vehicle stops and traffic checkpoints examining all oncoming traffic. 440 U.S. at 657. Justices Blackmun and Powell would have gone beyond non-random stops of 100 percent of oncoming traffic to allowing stops of just ten percent of traffic. 440 U.S. at 664-65 (Blackmun, J., concurring).

Most state courts have abided by this Court's rule of reasonableness, requiring certain specific protections for motorists, but generally upholding traffic sobriety checkpoints. *See, Little v. Maryland*, 479 A.2d 903 (Md. 1984) and cases cited therein.

Unfortunately, local government officials have not understood this Court's analysis. In part, this lack of understanding seems due to the fact that the language in *Prouse* dealing with traffic checks did not cover traffic sobriety checkpoints directly and was not a clear enough holding to prevent fear of litigation.

Amicus RID-USA has 136 chapters operating in 36 states, through which the organization has advocated traffic sobriety checkpoints at both state and local levels. Amicus RID-USA has frequently found local government officials and their legal counsel bewildered by the conflicting arguments or simply intimidated by the likelihood of litigation in the absence of a definitive opinion from the Court.

This Court must make a clear and definite statement regarding the constitutional validity of traffic sobriety checkpoints. Only then will the recommenda-

tions of the National Commission Against Drunk Driving and other bodies be carried out.

II. The Decision of the Michigan Court Ignores This Court's Balancing Test

The traffic sobriety check established in Michigan followed a model successfully used in Maryland. *Little*, *supra*. The Maryland model followed programs upheld in many other states. *Id*, 479 A.2d at 911-12.

Yet, despite the need to address the danger represented by drunk driving, despite government and voluntary agency findings of effectiveness and need, despite *Prouse* and decisions of other states, the Michigan courts excised traffic sobriety check points from the arsenal of law enforcement techniques available to stop drunk driving. App. at 20a, 102a.

In deciding that the program produced no positive benefits to weigh against the subjective intrusion on liberty interests, the Court of Appeals relied heavily on the fact that "one per cent or fewer of the drivers passing through sobriety checkpoints are arrested for drunk driving." App., at 15a. This constituted for the court a "low drunk driving arrest rate." App. at 18a.

Thus, the Michigan courts found that "sobriety checkpoints were not an effective means of combating drunk driving." App. at 20a. It may well be that *no* step, working alone, can be effective enough to meet the demanding test set by the Michigan courts.

As the numerous government studies have indicated, if there is any hope it will arise from the synergistic effect of a number of techniques working together. Surgeon General Koop, in *Proceedings*, at iii, 11. "The key to continuing the campaign with any hope

for success is the coordination of *all* the components." National Commission Report, at 9.

To gather such an array of law enforcement techniques without trenching on legitimate protected constitutional interests is difficult enough. But to have so many government and individual agencies, courts and legislators agree on a reasonable method to both protect rights and deter drunk driving, only to have the Michigan courts establish an impossible burden, disheartens and frustrates many of those working on this issue.

III. This is An Appropriate Case for Review.

The Supreme Court should take the case for at least three reasons. First, the case presents an important issue of safety on the nation's highways. The number of lives affected and the amount of economic damage caused by alcohol related collisions each year is staggering. This is a severe national problem, and this Court has the power to allow state and local governments access to a vital enforcement technique.

Second, the widespread support for traffic sobriety checkpoints has caused many to be put in place, and any adverse positions taken by state courts will chill these activities even though they are permitted by the Fourth Amendment.

Third, the Michigan courts' application of the balancing test laid out in prior Court opinions is wrong. The courts below ignored the fact that we need a multifaceted approach to combat drunk driving. The courts also improperly balanced the interests of individuals in avoiding occasional brief stops against the interests of all to citizens to be safer from drunk driving on the

public roadways. This Court must correct the Michigan courts' interpretation of the Fourth Amendment.

CONCLUSION

For these reasons, the writ of certiorari should be granted.

Respectfully submitted,

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